

REMARKS/ARGUMENTS

Prior to entry of this amendment, claims 1-22 were pending in this application. Claims 1 and 14 have been amended, no claims have been added, and no claims have been canceled herein. Therefore, claims 1-22 are pending. Applicant respectfully requests reconsideration of these claims for at least the reasons presented below.

35 U.S.C. § 102 Rejection, Ojha

The Office Action rejected claim 1 under 35 U.S.C. § 102(c) as being anticipated by U. S. Patent Pub. No. 2002/0152104 of Ojha et al. (hereinafter "Ojha"). The Applicant respectfully submits the following arguments pointing out significant differences between claim 1 submitted by the Applicants and Ojha.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicants respectfully argue that Ojha fails to disclose each and every claimed element. For example, Ojha fails to disclose, either expressly or inherently, a synchronization program synchronizing the new supply plan by processing orders from the first plurality of customer requests scheduled against the current supply plan into the new supply plan, wherein the synchronizing process is stopped prior to synchronizing all the orders in the first plurality of requests into the new supply plan. Furthermore, Ojha fails to disclose, expressly or inherently, an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system.

Ojha is directed to "planning and scheduling, and more particularly to synchronization of planning information in a high availability planning and scheduling architecture." (paragraph 2) However, as argued previously, Ojha does not disclose, expressly

or inherently, a synchronization program synchronizing the new supply plan by processing orders from the first plurality of customer requests scheduled against the current supply plan into the new supply plan, wherein the synchronizing process is stopped prior to synchronizing all the orders in the first plurality of requests into the new supply plan. In response to these arguments, the final Office Action contends that “Ojha et al discloses instruct operating HA systems to termination processing” and cites FIG. 5 and paragraph 50 of Ojha.

However, the Applicants respectfully contend that FIG. 5 illustrates and paragraph 50 seems to describe a process in which orders are processed on a first HA system, the first HA system is synchronized with a second HA system, order processing is stopped on the first HA system, and order processing is resumed on the second HA system, hence the stop record so that the second HA system can resume processing orders from where the first HA system stopped. Thus, the Applicants respectfully maintain that Ojha describes stopping of order processing on the first HA system but does not disclose, expressly or inherently, stopping synchronization of the first HA system with the second HA system.

Furthermore, Ojha does not disclose, expressly or inherently, an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system. Rather, Ojha is directed to replacing the systems, not supply plans used in any one of the systems. In fact, Ojha explicitly describes and requires replacement of one HA system with another HA system. See for example FIG. 5 of Ojha and the accompanying description at paragraphs 46-50 describing the process of replacing one HA system with another HA system and paragraph 52 describing some of the purported advantages of such an approach. Thus, not only does Ojha not anticipate an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system, but the Applicants respectfully contend that Ojha actually teaches away from synchronizing and replacing a supply plan within a given system. Therefore, Ojha also cannot be used as part of a valid combination of references to demonstrate a teaching or suggestion of such claim recitations.

Claim 1, upon which claims 2-13 and 19-22 depend, recites in part “after the new supply plan is created, a synchronization program of the ATP system synchronizing the new supply plan by processing with the ATP system orders from the first plurality of customer requests scheduled against the current supply plan into the new supply plan, wherein the synchronizing process is stopped prior to synchronizing all the orders in the first plurality of requests into the new supply plan; thereafter, temporarily stopping promising orders with the ATP system while synchronizing with the ATP system all remaining orders from the first plurality of requests not synchronized during the synchronizing process into the new supply plan; and after the remaining orders from the first plurality of requests are processed with the ATP system, replacing the current supply plan used by the ATP system with the new supply plan so that the ATP system processes future customer requests against the new supply plan.” Ojha does not disclose, expressly or inherently, a synchronization program synchronizing the new supply plan by processing orders from the first plurality of customer requests scheduled against the current supply plan into the new supply plan, wherein the synchronizing process is stopped prior to synchronizing all the orders in the first plurality of requests into the new supply plan. Rather, Ojha describes stopping of order processing on the first HA system but does not disclose, expressly or inherently, stopping synchronization of the first HA system with the second HA system. Furthermore, Ojha does not disclose, expressly or inherently, an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system. Rather, Ojha is directed to replacing the systems, not supply plans used in any one of the systems. For at least these reasons, the Applicants respectfully request reconsideration and withdrawal of the rejection.

35 U.S.C. § 103 Rejection, Ojha and further in view of Bush

The Office Action has rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Ojha as applied to claim 1 above, and further in view of U.S. Patent No. 6,486,899 to Bush Jr. (hereinafter “Bush”). The Applicants respectfully traverse the rejection for

at least the reason that claim 2 depends on an allowable base claim as discussed in detail above. For at least these reasons, the Applicants respectfully request that the rejection be withdrawn.

35 U.S.C. § 103 Rejection, Ojha and further in view of AMR Consulting

The Office Action has rejected claims 3-5 under 35 U.S.C. § 103(a) as being unpatentable over Ojha as applied to claim 1 above, and further in view of a publication entitled *Planning for Tomorrow: A Tactical Approach to Supply Chain Innovation*, AMR Consulting © 2002 (hereinafter “AMR Consulting”). The Applicants respectfully traverse the rejection for at least the reason that claims 3-5 depend on an allowable base claim as discussed in detail above. For at least these reasons, the Applicants respectfully request that the rejection be withdrawn.

35 U.S.C. § 103 Rejection, Ojha and further in view of Brichta

The Office Action has rejected claims 6, 7, 21, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Ojha as applied to claim 1 above, and further in view of U.S. Patent No. 5,864,483 to Brichta (hereinafter “Brichta”). The Applicants respectfully traverse the rejection for at least the reason that claims 6 and 7 depend on an allowable base claim as discussed in detail above. For at least these reasons, the Applicants respectfully request that the rejection be withdrawn.

35 U.S.C. § 103 Rejection, Ojha and further in view of Syed

The Office Action has rejected claims 8 and 9 under 35 U.S.C. § 103(a) as being unpatentable over Ojha as applied to claim 1 above, and further in view of U.S. Patent No. RE39,549 to Syed et al. (hereinafter “Syed”). The Applicants respectfully traverse the rejection for at least the reason that claims 8 and 9 depend on an allowable base claim as discussed in detail above. For at least these reasons, the Applicants respectfully request that the rejection be withdrawn.

35 U.S.C. § 103 Rejection, Ojha

The Office Action has rejected claims 10, 11, 14, 15, 19, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Ojha. The Applicants respectfully traverse the rejection for at least the reason that claims 10, 11, 19, and 20 depend on an allowable base claim as discussed in detail above. Furthermore, the Applicants respectfully submit that the Office Action does not establish a *prima facie* case of obviousness in rejecting these claims, as amended. Therefore, the Applicants request reconsideration and withdrawal of the rejection.

In order to establish a *prima facie* case of obviousness, all claimed limitations must first be taught or suggested by the prior art. See, e.g., *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006). The Office Action must then provide an explicit analysis supporting the rejection. See *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (“a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art”). While the Office Action can use one of several exemplary rationales from the MPEP to support an obviousness rejection under *KSR*, all the rationales still require the Office Action to demonstrate that all the claim elements are shown in the prior art. See MPEP §2143. As will be discussed below, the references cited by the Office Action do not teach or suggest each claimed limitation.

Claim 14, upon which claim 15 depends, recites in part “a synchronization program of the ATP system synchronizing with the ATP system a first portion of the first plurality of requests between the first supply plan and the new supply plan; the synchronization program stopping synchronization with the ATP system after synchronizing the first portion of the first plurality of requests between the first supply plan and the new supply plan; the order processing component temporarily stopping processing orders with the ATP system while processing with the ATP system a second portion of the first plurality of requests between the first supply plan and the new supply plan and while processing with the ATP system the second

plurality of requests; the supply chain planning component invalidating with the ATP system the first supply plan; the supply chain planning component activating with the ATP system the new supply plan; the order processing component receiving at the ATP system a third plurality of requests from customers, wherein the third plurality of requests is received after the second plurality of requests and after the first supply plan is invalidated and the new supply plan is activated; and the order processing component promising orders from the third plurality of requests with the ATP system against the new supply plan.” As discussed in detail above, Ojha does not teach or suggest a synchronization program synchronizing a first portion of the first plurality of requests between the first supply plan and the new supply plan and stopping synchronization after synchronizing the first portion of the first plurality of requests between the first supply plan and the new supply plan. Rather, Ojha describes stopping of order processing on the first HA system but does not disclose, expressly or inherently, stopping synchronization of the first HA system with the second HA system. Furthermore, Ojha does not teach or suggest, an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system. Rather, Ojha is directed to replacing the systems, not supply plans used in any one of the systems. In fact, Ojha explicitly describes and requires replacement of one HA system with another HA system. See for example FIG. 5 of Ojha and the accompanying description at paragraphs 46-50 describing the process of replacing one HA system with another HA system and paragraph 52 describing some of the purported advantages of such an approach. Thus, not only does Ojha not anticipate an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system, but the Applicants respectfully contend that Ojha actually teaches away from synchronizing and replacing a supply plan within a given system. For at least these reasons, the Applicants respectfully request reconsideration and withdrawal of the rejection.

35 U.S.C. § 103 Rejection, Ojha and further in view of Aram

The Office Action has rejected claims 12, 13, and 16-18 under 35 U.S.C. § 103(a) as being unpatentable over Ojha as applied to claim 1 above, and further in view of U.S. Patent

Pub. No. 20020072988 of Aram (hereinafter "Aram"). The Applicants respectfully traverse the rejection for at least the reason that claims 12 and 13 depend on an allowable base claim as discussed in detail above. For at least these reasons, the Applicants respectfully request that the rejection be withdrawn.

Regarding claims 16-18, the Applicants respectfully contend as detailed above, that Ojha does not teach or suggest stopping synchronization of orders of the first plurality of customer requests prior to synchronizing all the orders of the first plurality of customer requests. The Applicants further contend that Aram fails to correct this deficiency. Aram is directed to "systems and methods for managing the acquisition and supply of goods and/or services and for demand planning" that "assists a supplier in planning inventory management, allows a supplier to predict when there is risk of letting a customer down, and allows a supplier to estimate the effect of a batch of work-in-progress not being completed." (paragraphs 2 and 8) However, Aram does not teach or suggest, alone or in combination with Ojha, stopping synchronization of orders of the first plurality of customer requests prior to synchronizing all the orders of the first plurality of customer requests. Rather, Aram is silent with regard to any type of synchronization process(es).

Claim 16, upon which claims 17 and 18 depend, recites in part after the new supply plan is created, synchronizing orders from the first plurality of customer requests scheduled against the current supply plan into the new supply plan by processing a first subset of the plurality of customer requests against the new supply plan until a threshold number of orders in the first plurality of requests is reached; [and] stopping synchronization of orders of the first plurality of customer requests prior to synchronizing all the orders of the first plurality of customer requests." Neither Ojha nor Aram teach or suggest, alone or in combination, stopping synchronization of orders of the first plurality of customer requests prior to synchronizing all the orders of the first plurality of customer requests. Rather, Ojha describes stopping of order processing on the first HA system but does not disclose, expressly or inherently, stopping

synchronization of the first HA system with the second HA system while Aram is silent with regard to any type of synchronization process(es).

Furthermore, neither Ojha nor Aram teach or suggest, alone or in combination, an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system. Rather, Ojha is directed to replacing the systems, not supply plans used in any one of the systems. In fact, Ojha explicitly describes and requires replacement of one HA system with another HA system. See for example FIG. 5 of Ojha and the accompanying description at paragraphs 46-50 describing the process of replacing one HA system with another HA system and paragraph 52 describing some of the purported advantages of such an approach. Thus, not only does Ojha not anticipate an available-to-promise system or other system using such a synchronization as part of a process to replace a supply plan in use by the ATP system, but the Applicants respectfully contend that Ojha actually teaches away from synchronizing and replacing a supply plan within a given system. Therefore, the combination of Ojha and Aram is improper. For at least these reasons, the Applicants respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

/William J. Daley/
William J. Daley
Reg. No. 52,471

Appl. No. 10/612,257

Amdt. dated December 18, 2009

Reply to Office Action of September 18, 2009

PATENT

TOWNSEND and TOWNSEND and CREW LLP

Two Embarcadero Center, Eighth Floor

San Francisco, California 94111-3834

Tel: 303-571-4000

Fax: 415-576-0300

WJD:jep

62355968 v1